UNITED STATES DEPARTMENT OF JUSTICE

AUDIO TRANSCRIPTION

ECOVEST-DOJ_1567963

IN THE MATTER OF

UNITED STATES V. ZAK

Cause No. 1:18-cv-05774-AT

Exhibit

1402

A P P E A R A N C E S

BOB McCULLOUGH

Senior Vice President and CFO

EcoVest Capital

NORM

MICHAEL

P R O C E E D I N G S

MR. McCULLOUGH: EcoVest Capital is our firm. I'm Bob McCullough. I'm the senior vice president and CFO. Our firm has been in existence as a standalone company since 2012. But really before that, we were actually formed as a subsidiary of another company in 2009. And let me get to that in a minute because that gets to be really important.

Our CEO and our founder is a gentleman named Alan Solon. Alan started his career in brand marketing up in New York City, moved down here to do the same sort of thing, you know, as his career progressed. And at one point in time wrote a business plan for a second home amenity developer in the Carolinas and did such a good job he was actually asked to go run the P&L there. And there -- that's how he got into real estate development.

That path took him towards being a developer on his own where he actually had a golf course community development in Chattanooga, Tennessee. And in both of those instances, he inherited this concept of a conservation easement. So that's how he kind of

infrastructure and we can actually fund phase 1 of construction as we're out there getting our other financing in place. I failed to mention that before, but that comes back to us as an important point here in a minute.

But again, a reasonable expectation of development, yes, we've got a -- as I mentioned a permit-ready fully underwritten development plan that can actually fund phase 1 of construction. If the tax benefits are going to inure to the benefit of the investors, we have to have a proper TEFRA partnership structure in place. Our attorneys of course have structured that and opined on it, so we're comfortable there.

So the last thing that you need is you need to have an appraisal done of the valuation. And this is done by a process called a "qualified appraisal." Now this is an area the IRS has already promised that they're going to attack in an audit. We know that. So once again who we choose to use becomes extremely important. So we only use the best appraisers out there. We have predominantly used one gentleman named

Claud Clark. Claud has done over 500 conservation easement appraisals, which by the way is only a portion of his business.

I think just by a way of example on how good he is when that oil -- BP oil spill happened several years ago, he was the appraiser that the state of Alabama hired to do the appraised value on the, you know, the harm basically that occurred to the state because of that oil spill. Claud has been successful in defending himself in the tax courts with conservation easements. There is -- probably the most famous case that benefited the taxpayers is a case called the Kiva Dunes Case. Claud was the appraiser.

In that case I came to find out later that it was actually his first conservation easement appraisal. So, you know, even more kudos to him. And he has served as expert witness on behalf of other taxpayers in several other court cases and appeals cases.

We also used two other gentlemen that we're starting to diversify with, Clay Vivald (phonetic) and Ray Veild (phonetic) both again have histories very

similar to Claud's. Both have already defended their work product with the IRS. So that's the type of person that we use.

So I'm going to spend a minute and talk about how a qualified appraisal works. You mentioned earlier that you've been involved with these, but they didn't use this kind of what they call the highest and best use methodology which the tax courts have actually prescribed in cases over the last several years.

So let me just explain in kind of layman's terms how a qualified appraisal works. It works kind of like a developer would look at a piece of property. And I'll also explain why the traditional appraisal methodology doesn't work here. So let's say that there's a landowner in Myrtle Beach. Myrtle Beach is going crazy with development right now. And let's say that that landowner has a traditional fair market value appraisal, willing buyer to willing seller in this market today based on, you know, similar property trade complements. And let's say that that traditional fair market value appraisal comes back in

a million dollars.

Well, if that landowner extinguishes these very valuable development rights forever and takes a million dollar noncash charitable deduction, they're going to be underwater, you know, and lose money on that transaction because they're not going to be able to fully recoup that base usually based on where their tax rate is. And the federal government realizes that that does not provide incentive. So the tax courts have prescribed what they call this before and after highest and best use methodology. And as I mentioned, it effectively looks at the property like a developer.

If a developer came in and saw that they could buy this piece of property from this fellow for a million dollars, they don't think it's worth a million. They look at themselves and say, wow, I think could build product for $4 million. So now, I'm $5 million all in. And I believe I could sell it for $15 and net out $10 million. So, it's worth $10 million to me. And that's kind of how this before and after methodology works.

The appraiser calculates the first. He

calculates the before value. Think about it this way, what's the value of this property with its development rights intact that their highest and best use in this market today before they're extinguished? And in my analogy, that's worth 10 -- that's the $10 million number.

And then after they're extinguished, land, of course, always has value, but with so many restrictions, that value may be very low. Let's say it's calculated out to be $200,000. The difference between the before and the after, in my example, $9.8 million, that would be the value of the noncash charitable deduction generated by placing a conservation easement on that property in this market today. Did that make sense how I just explained that?

NORM: Yeah. Yeah.

MR. McCULLOUGH: Okay, perfect. So, Claud goes through and he does his before and after calculation. We now know what the deduction value should be. And at this point in time, we've really done everything that we need to do, and I hire the minimum standards to mitigate risk and we're kind of

CERTIFICATE OF TRANSCRIBER

I, JIMMY JACOB, do hereby certify that this transcript was prepared from audio to the best of my ability.

I am neither counsel for, related to, nor employed by any of the parties to this action, nor financially or otherwise interested in the outcome of this action.

June 30, 2020

DATE JIMMY JACOB